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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

7 WILLIAM J. CUNDITT,
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9 *Plaintiff,*

10 vs.

11 HIGH DESERT STATE PRISON, *et al.*

12 *Defendants.*

3:11-cv-00397-ECR-RAM

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14 ORDER

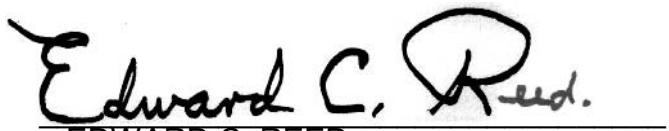
15 This prisoner action comes before the Court following upon plaintiff's filing of a notice
16 of appeal (#5). Pursuant to 28 U.S.C. § 1915(a)(3), the Court certifies to the Court of Appeals
17 that the appeal is not taken in good faith.

18 The Court dismissed the action without prejudice to the filing of a new, properly
19 commenced action. Plaintiff failed to properly commence the action because he neither paid
20 the filing fee nor submitted an application to proceed *in forma pauperis*. Before dismissing
21 the action without prejudice, the Court first reviewed the factual allegations and determined
22 that a promptly filed new civil rights action would not be time-barred. The Court further, out
23 of an abundance of caution, directed the Clerk to open a separate and new habeas action
24 because some of the papers submitted with the prisoner civil rights complaint perhaps could
25 be construed as an attempt to also file a habeas petition. Plaintiff thus is in no manner or
26 sense prejudiced by a dismissal of the present improperly-commenced civil rights action. The appeal
27 from the dismissal accordingly is frivolous such that an appeal would be dismissed in the case
28 of a non-indigent litigant.

1 IT THEREFORE IS ORDERED, pursuant to 28 U.S.C. § 1915(a)(3), that the Court
2 certifies to the Court of Appeals that the appeal is not taken in good faith.

3 IT FURTHER IS ORDERED, so that the certification herein shall be clearly marked on
4 the docket for review by the Court of Appeals, that the Clerk of this Court shall docket this
5 order on the docket sheet as an order that certifies to the Court of Appeals that the appeal
6 is not taken in good faith and shall forward same to the Ninth Circuit in a manner consistent
7 with the Clerk's current practice.

8 DATED: June 30, 2011.

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11 EDWARD C. REED
12 United States District Judge
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